

No. 24-1434

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE INVESTORS WARRANTY OF AMERICA, LLC
Petitioner.

From the United States District Court for
the District of Maryland
Civil Action 8:20-cv-01502

**INVESTORS WARRANTY OF AMERICA, LLC’S RESPONSE TO ROCK
SPRING PLAZA II, LLC’S MOTION TO SUPPLEMENT THE RECORD**

Respondent Rock Spring Plaza II, LLC (“Plaza”) filed a 21-page brief in the guise of a “Response” to Investor’s Warranty of America, LLC’s (“IWA”) Motion for Leave to File a Reply Brief and Motion to Supplement the Record. The Court should disregard Plaza’s “Response” as it is not germane to the three narrow questions presented by IWA’s mandamus petition:

- (1) whether following the Court’s grant of the First Mandamus Petition, the district court erred in ordering the production of IWA’s privileged *ex parte* materials submitted at the direction of the district court for the sole purpose of evaluating IWA’s claim of privilege;

- (2) whether the district court erred in failing to deny Plaintiff's motion seeking to use IWA's privilege information and substantive or impeachment evidence at trial or in briefings; and
- (3) whether the case should be assigned on remand.

The answer to each question is yes. Unless this Court orders otherwise, IWA will not respond to Plaza's "Response" on the merits here. Trial begins August 26, 2024. Plaza will have its chance to present its merits case in the district court, and IWA will have its chance to challenge it. ***Trial*** is the place for Plaza's arguments, not this mandamus proceeding about IWA's attorney-client privilege.

Plaza's most recent filing (ECF-46) makes clear that IWA's mandamus petition should be decided on an expedited manner. Plaza's position is that this Court, despite its grant of IWA's First Mandamus Petition and vacatur of the Production Order, has not "made a final determination of the crime-fraud issue." ECF-46 at 2. This is Plaza's position in the district court and the district court has credited it. Unfortunately, if the Court does not grant this Second Mandamus Petition, the district court will force IWA to hand over additional privileged communications to Plaza and allow Plaza to use them at trial.

IWA respectfully requests that the Court grant its Second Petition for Mandamus.

Dated: July 3, 2024

Respectfully submitted,

/s/ Rebecca A. Davis

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because this motion contains 317 words, excluding those parts of the motion exempted by Rule 27(a)(2)(B).

2. This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: July 3, 2024

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CERTIFICATE OF SERVICE

I certify that on this 3rd day of July, 2024, of the foregoing motion was served
by Federal Express to:

The Honorable Peter Messitte
United States District Court for the District of Maryland
Southern Division
6500 Cherrywood Lane
Greenbelt, MD 20770

On this day, a copy of the foregoing motion was served electronically via ECF
to all counsel of record.

Dated: July 3, 2024

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